

CONNECTICUT ALLIANCE TO END SEXUAL VIOLENCE



Support. Advocate. Prevent.

After a prolonged and controversial review process, the US Department of Education announced the final Title IX rules on May 6th. Once published in the Federal Register they are the law. As part of the federal civil rights law passed as part of the Education Amendments of 1972 Title IX protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

The rule changes are significantly slanted to protect the perpetrators of sexual harassment and abuse creating an unsafe environment for survivors at our colleges and universities. Now is not the time to reverse the gains made acknowledging the prevalence of sexual violence and the harm it causes. Below is a brief outline of the rule changes to Title IX.

- **A harmful definition of sexual harassment.** This definition *requires harassment to be so severe, pervasive, and objectively offensive that a student must be denied access to their education before they can proceed with a Title IX complaint.* Not only is it a much higher standard to meet but it requires the survivor to alter their education irrevocably in order to be able to take action while the perpetrator has no boundaries placed on them. Affirmative consent is the measure by which Connecticut's laws define sexual conduct on campuses.
- **Supports a higher standard of proof.** Many institutions will be required to adopt the "clear and convincing" standard of evidence for grievance procedures, rather than the less demanding, more reasonable, and more equitable "preponderance of the evidence" standard. Survivors and their advocates will have a greater burden than the offender and their representation as they attempt to achieve safety and justice in these procedures. Connecticut's statutes define that the "preponderance of the evidence" standard is used for campus sexual harassment and assault cases.
- **A stricter standard for reporting.** Under current rules college and university Title IX responsibilities are based on what the school *should reasonably know* of an incident. With this new rule, only the school's Title IX coordinator or an official with authority to institute corrective measures on a recipient's behalf triggers action by the school. Residential hall staff, coaches, teachers, or administrators are no longer responsible for reporting sexual harassment to their institutions, creating a barrier to holding their communities accountable and protecting students and staff.
- **Lowering the bar for schools to take action.** While current recommendations admonish institutions unless they act "reasonably" (most people would find the complained action offensive) in a case of sexual violence, the new rules would initiate the lower standard of "deliberately indifferent" or "clearly unreasonable" (the sexual harassment or assault needs to be pervasive or cause the complainant to be "subject to" harassment, regardless of past actions of the respondent). This standard reduces the accountability of these institutions and reduces the rights of student survivors by not looking at the consequences or the entirety of the event.
- **Presumption of innocence over neutrality.** These rules would mandate that all grievance procedures are established with a presumption that the perpetrator is not responsible and the violence did not occur, rather than establishing a procedure with neutrality toward both parties. This presumption grossly ignores the realities of the prevalence of sexual violence and sends the message that survivors are not to be believed.



- **Redefining harm by geography rather than by impact.** The new rules focus on where an assault takes place and *schools will be mandated to dismiss formal complaints that did not take place within their program or activity, or where the institution did not have “substantial control”*. Prior guidance focused on the impact of the harassment on the school’s students or employees and not location. Student survivors would potentially lose the ability to pursue recourse against a respondent who they see every day on campus, only because the incident occurred online, off-campus, or at a school-sponsored study abroad program.
- **Forcing live cross-examinations.** In a considerable deviation from current recommendations, these rules require formal grievance procedures to include a live cross-examination at a hearing, putting survivors and their witnesses in a situation where they will be confronted and cross-examined by an advisor chosen by the perpetrator. If a survivor or witness does not agree to cross-examination at the live hearing, the decision-maker(s) must disregard that person’s statement in reaching a determination regarding responsibility. This rule would inhibit student reporting, and punish survivors who report by needlessly re-traumatizing them.
- **Implementation of “informal resolutions”.** “Informal resolution” without a full investigation can be employed at any time prior to reaching a determination in the case. Based on the other rules listed and encouragement from other students, survivors may feel pressured into selecting this option. A mediation such as this has the propensity to further traumatize or harm survivors, while further reducing the accountability of perpetrators and institutions.
- **Limiting appeal options.** Student survivors would not be entitled to an appeal; the institution would have to choose to offer one to both parties in order to initiate any appeals process. Furthermore, if an appeal is offered, survivors cannot argue for a specific sanction.
- **Relaxing standards for religious exemptions.** Institutions may be exempt from Title IX regulations due to religious tenets. With no timeline, specified institutions that are already being investigated by the Department can suddenly invoke the religious exemption reducing the accountability of institutions and reducing the rights students have to be protected.

In 2019 the Connecticut Legislature passed [Special Act No. 19-23](#) to convene a task force that would assess Connecticut’s laws with the new regulations. Though the task force will formally address the impact of these rules on Connecticut, based on our understanding of these rules, we *anticipate the following to remain the same in Connecticut* as a result of our formerly established state legislation:

- **Utilizing the “affirmative consent” standard** in prevention programming and investigations;
- **Provision of resources and information to students and employees** who report sexual violence (such as available services, law enforcement options, and accommodations);
- The necessity of **Campus Resource Teams**;
- Establishing **MOU’s with community-based sexual violence and domestic violence programs** to ensure that students continue to have support and advocacy; and
- **Trauma-informed response training** and other awareness/prevention programming provided to the Title IX coordinator and campus police.